

Opinion No. 45-4801

October 3, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Bryan Johnson, Chairman Special Committee Albuquerque Bar Association
Albuquerque, New Mexico

{*142} We have your letter of October 2, 1945, signed by the various members of the Special Committee of the Albuquerque Bar Association, appointed to study a recent opinion given by this office concerning soldiers' exemptions in connection with joint tenancies. You state that your local problem is confined to a conveyance to husband and wife jointly, with soldiers' exemption claimed by the husband.

As you point out, we merely held that so far as joint tenancies are concerned, exemption could only be claimed as to the amount of the interest owned by the soldier. Our opinion did not discuss what constitutes a joint tenancy; and while it is further pointed out that your letter concerns a conveyance to husband and wife jointly, the specific wording used in such conveyances is not set out. However, the facts given are sufficiently clear to give an opinion on this matter.

The question of the nature of estates created by the husband and wife was discussed at some length in an opinion of this office numbered 4567, where it was held that a tenancy by the entirety is created under the same circumstances that a joint tenancy is created, except that if a husband and wife relationship is involved, a tenancy by the entirety is created, and not a joint tenancy.

In addition to cases cited in such opinion, a copy of which is herein enclosed, we call your attention to the holding in the case of *Hernandez v. Becker*, 54 F.2d 542, which concerned a New Mexico problem.

A tenancy by the entirety, as stated in the cases cited in Opinion No. 4567, and in the case of *Hernandez v. Becker*, supra, hold that under the fiction of the common law, that the husband and wife are one person, that both the husband and the wife are considered to own the entire estate when property is held as tenants by the entirety. Therefore, since under the fact situation which you submit to us, a joint tenancy is not involved, but a tenancy by the entirety is involved, wherein the husband is considered to own the entire estate, he would, if entitled to soldiers' exemption, be entitled to claim exemption on the entire property.

By HARRY L. BIGBEE,

Asst. Atty. General